IN THE HIGH COURT OF DELHI

Crl.M.C. No.4370/2005

Mrs.Veena Churamani ..... Petitioner
! through: Mr.Rohit Kumar, Adv.

VERSUS

$ BSES Rajdhani Power Ltd. ..... Respondent
^ through : Mr.Uttam Singh Negi, Adv.

% DATE OF DECISION: 11.10.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. The petitioner has challenged the order dated 22.7.2004 summoning petitioner to face trial for an offence of theft of electricity pursuant to a complaint lodged by BSES Rajdhani Power Ltd., licensee supplying electricity in Chattarpur Farms, Mehrauli, Delhi.

2. As per the complaint, petitioner is stated to have committed direct theft of electricity by tapping the electricity overhead main lines in the area by throwing a hook thereon.

3. It is urged by learned counsel for the petitioner that there was no material before the learned Judge which prima facie evidences any theft of electricity by the petitioner. Learned counsel points out that in the documents which were filed, name of Mr.Churamani was surfacing. For unexplainable reason, counsel urges that petitioner who is Mrs.Churamani has been impleaded as an accused.

4. I may note that in the complaint, pertaining to the theft of electricity, relevant averments are to be found in para 2 and para 3 of the complaint. The same reads as under:-

> "2. That the accused is not registered consumer of complainant company for supply of electricity in the premises bearing Farm House No.7, Pine Drive, Chattarpur, Delhi but is using electricity illegally through unauthorized means from nearby L.V.Cables of complainant company.
>
> 3. That on 23.6.2004 at 1700 hours an inspection/raid was carried out on the premises of the accused by the officers of the complainant company (raiding team) and accused was found using electricity by unauthorized means more particularly indulged in the theft of electricity under Section 135 of the Electricity Act, 2003. No electricity meter was found at site and the accused was found tapping electricity illegally from complainant company's nearby LV overhead mains through four no of wires of size 7/16 SWG PVC Aluminum wires (3 wires for 3 phases and 1 wire for neutral tapping). The connected load was checked and assessed in presence of user's representative. Inspection report is enclosed and

marked as Annexure-A. Connected load of 30.458 kw was found and bill is raised for 22.458 kw after giving benefit of load of geysers (heating load). Form for assessment of connected load was prepared by the raiding team and the same is enclosed and marked as Annexure-B. Representative of the accused refused to sign and accept inspection report and assessment form as mentioned at Annexure-A and B. Names of the members of inspection team of the complainant company are given below:-

"a) Mr.Anil Kumar, Head Enforcement (Inspection).
b) Mr.R.S.Sidhu, Inspector Enforcement.
c) Mr.Ram Kishor Sharma, Inspector Enforcement.
d) Mr.Mohan Singh, A.M.Enforcement.
e) Mr.Sita Ram, A.M. Enforcement.
f) Mr.S.K.Sharma, Inspector Enforcement.
g) Mr.Abhishek, G.E.T.
h) Mr.A.K.Sharma, Engineer Enforcement.

All at BSES Enforcement (Inspection) department Shankar Road, New Delhi.

i) Photographer : Arora Photo Studio, C-133, Gautam Nagar, New Delhi."

5. It would be relevant to note that as per the complaint, petitioner was not the registered consumer and was alleged to be indulging in direct theft of electricity. It has been specifically pleaded in para 3 of the complaint that *the connected load was checked and assessed <u>in presence of user's representative</u>.*

6. A perusal of the inspection report which was filed along with the complaint records that the inspection was carried out on 23.6.2004. In the proforma of the inspection report vide column 2.2 and 2.4 it was recorded as under:-

> "2.2 Name of the user : Mr.Churamani (as stated at site).
> 2.4 Supply address : No.7, Pine Drive Farm House, Chattarpur, Mehrauli, Delhi."

7. A note has been penned at the bottom of the first sheet of the inspection report as under:-

> "User's representative present at site has refused to sign and accept the report."

8. At page No.2 of the inspection report, under the caption 'Any Other Remarks', it has been noted as under:-

> "During joint site inspection the above mentioned premise user i.e. SHRI CHURAMANI (As stated at site by the representative of user present at site) was found indulged in direct theft of electricity by illegally tapping from BSES nearby LV overhead mains through four no. of colours Red + Blue + Black of size 7/16 SWG illegal PVC aluminum wires (3 Wires for 3 phases and one wire for neutral tapping). No BSES's authorized energy meter was found existing his his farm house and the entire connected load was running on illegal tapping. The connected load was checked and assessed in presence of user's representative present at site at the time of inspection."

9. Pre-summoning evidence has been led by the complainant by means of affidavit by way of evidence of one

Anil Kumar, Rahul, A.S.Menon and Sita Ram. In their affidavits by way of evidence they have deposed that representative of the accused – (Mrs.Veena Churamani) refused to sign the inspection report and that the inspection report was Ex.CW-1/3.

10. From the material placed before the learned Metropolitan Magistrate i.e. report of inspection it is evident that the representative who had joined the inspection was the representative of Shri Churamani and not Smt.Churamani.

11. Throughout the inspection report records that it pertains to a premises stated to be owned by Mr.Churamani as per the representative of the owner who was present.

12. How did the person who was indulged in theft of electricity got converted from Mr.Churamani to Mrs.Churamani remains a mystery.

13. May be, the wife lives with her husband. But, she would not be liable for an offence committed by her husband unless law makes a wife liable for the act of her husband.

14. No provision under the Electricity Act 2003 has been pointed to me where from, under the statute, liability of theft of electricity by the husband makes the wife liable for punishment.

15. Under the circumstances I have no option but to hold that there was no material before the learned Metropolitan

Magistrate where from a prima facie opinion could be formed that the petitioner was guilty of theft of electricity.

16. Petition stands disposed of quashing the summoning order dated 22.7.2004.

October 11, 2007 (PRADEEP NANDRAJOG)
dk JUDGE